

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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FRANKLIN B. GIL-REYES,

Petitioner,

ORDER

03-CR-01198

-versus-

UNITED STATES OF AMERICA,

Defendant.

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JOHN GLEESON, United States District Judge:

On October 22, 2012, Petitioner Franklin B. Gil-Reyes filed the instant *pro se* motion in his criminal case, which purports to be a motion pursuant to 28 U.S.C. § 2255 (“§ 2255”). A petitioner may not receive review of a second or successive habeas petition unless he has first received permission from the Court of Appeals to do so. 28 U.S.C. § 2244(b)(3)(A). To the extent Gil-Reyes seeks to challenge the sentence imposed, I find that this is a second § 2255 petition. *See Gil-Reyes v. United States*, No. 10 Civ 5310 (filed Nov. 12, 2010, denying habeas relief on May 5, 2011). Accordingly, I transfer this portion of his motion to the Second Circuit in the interest of justice. *Liriano v. United States*, 95 F.3d 119, 123 (2d Cir. 1996) (per curiam).

In the instant motion, Gil-Reyes also alleges that he is being deprived of rights secured by the Equal Protection Clause of the federal Constitution by his exclusion – solely on account of his alienage – from “benefits and privileges” allegedly reserved for United States citizens, including a “one year reduction of sentence through a drug program” and a “Unicor job.” With respect to this issue, the United States is directed to respond in writing on or before December 10, 2012 specifically addressing whether such a constitutional claim is properly

brought in this district; and, assuming this is the proper forum, the merits of the allegation. Gil-Reyes is directed to respond to the government by January 10, 2013.

JOHN GLEESON, U.S.D.J.

Dated: November 13, 2012
Brooklyn, New York